

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ELVIA GONZALEZ,

Plaintiff

V.

ANDREW SAUL, Commissioner of Social
Security,

Defendant

Case No.: 2:18-cv-02199-APG-NJK

Order Accepting Report and Recommendation, Granting Motion to Affirm, and Denying Motion to Remand

[ECF Nos. 14, 19, 21]

Plaintiff Elvia Gonzalez filed an application for disability insurance benefits on October 14, 2014, alleging disability beginning in April 2013 due to back and neck problems. The Social Security Administration denied Gonzalez's application, both initially and on reconsideration. Administrative Law Judge (ALJ) Christopher Daniels held a hearing on April 27, 2017. On October 17, 2017, ALJ Daniels published a decision finding that Gonzalez was not disabled. The Appeals Council declined Gonzalez's request for review, making the decision the Commissioner's final decision. Gonzalez seeks review of that decision, arguing that the ALJ erred in the evaluation of the medical opinion evidence and in discounting her testimony.

On November 6, 2019, Magistrate Judge Koppe recommended that I grant the Commissioner's motion to affirm and deny Gonzalez's motion to remand. ECF No. 21. Judge Koppe concluded that the ALJ's decision to give less weight to Dr. Sherman's opinion because it was inconsistent with the medical record was supported by substantial evidence. *Id.* at 7-8. Judge Koppe also concluded that there was substantial evidence to support the ALJ's determination that Gonzalez's testimony about her symptoms was not entirely consistent with the medical evidence. *Id.* at 8-9. Gonzalez objects to Judge Koppe's report and recommendation.

1 ECF No. 22. Having reviewed the record de novo, I agree with Judge Koppe and adopt the
2 report and recommendation as my own. I therefore grant the Commissioner's motion to affirm
3 and deny Gonzalez's motion to remand.

4 I write only to respond to Gonzalez's objection regarding Judge Koppe's evaluation of
5 the ALJ's treatment of Dr. Sherman's opinion. Judge Koppe found that the ALJ's rejection of
6 Dr. Sherman's opinion was supported by substantial evidence because the record showed that
7 Gonzalez had significant improvements in her condition following her surgeries. Judge Koppe
8 cited to the record for examples of language indicating such improvements. Gonzalez objects to
9 these examples, arguing they occurred prior to Gonzalez's cervical spinal surgery, so they do not
10 represent her most recent condition. However, the record shows that Gonzalez's symptoms
11 improved following her cervical spinal surgery as well. *See* ECF No. 12-1 at 530 (A January
12 2015 visit notes that Gonzalez "reports continued improvement of her neck symptoms."); *id.* at
13 552, 538 (Two doctor visits show that Gonzalez's neck range of motion improved from
14 September 2014-December 2014.). This, in addition to the reasons provided in the report and
15 recommendation, constitutes substantial evidence to support the ALJ's determination to give
16 little weight to Dr. Sherman's opinion.

17 **I. CONCLUSION**

18 I THEREFORE ORDER that plaintiff Elvia Gonzalez's objection (ECF No. 22) is
19 overruled and that the Report and Recommendation (**ECF No. 21**) is **accepted**.

20 I FURTHER ORDER that plaintiff Elvia Gonzalez's motion to remand (**ECF No. 14**) is
21 **DENIED**.

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1 I FURTHER ORDER that the Commissioner's motion to affirm (**ECF No. 19**) is
2 **GRANTED.** The clerk of court is instructed to enter judgment in favor of defendant Andrew
3 Saul and against plaintiff Elvia Gonzalez.

4 DATED this 19th day of December, 2019.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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